



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Prosperity Dredging Co., Inc.
File: B-225543
Date: March 30, 1987

DIGEST

Where invitation for bids set forth minimum acceptable engine size for dredge with a particular size pump discharge pipe, required detailed description of dredge and related equipment, and contained an itemized sheet listing the information that had to be supplied with bids, failure of bid to supply required, material information rendered bid nonresponsive.

DECISION

Prosperity Dredging Co., Inc., protests award of a dredging contract to Folk Construction Co., Inc., by the United States Army Corps of Engineers pursuant to invitation for bids (IFB) No. DACW01-86-B-0149. Prosperity contends that the bid submitted by Folk was nonresponsive to the IFB requirements and, therefore, award to Folk was improper. Alternatively, Prosperity contends that the Corps incorrectly evaluated Prosperity's bid prices which resulted in Prosperity's bid being considered only the second-lowest priced bid, instead of the lowest priced bid. In either event, Prosperity believes that it is entitled to the award.

We sustain the protest.

The invitation was issued on August 19, 1986, and solicited bids for rental of an hydraulic cutterhead pipeline dredge and attendant plant, with operators, for dredging on various bendways on the Tennessee-Tombigbee Waterway in Alabama and Mississippi. The IFB indicated that for the purpose of bid evaluation bids were to be based upon an estimated quantity of 850,000 cubic yards of material to be removed. The IFB also required that the offered dredges have a pump discharge

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pipe with an inside diameter of not less than 20 inches nor more than 24 inches. The bidders were directed to determine the approximate number of hours required to do the different types of work specified and to compute their bid prices based upon the size of the pump discharge pipe of their offered dredge and the connected brake horsepower of that particular machine. The statement of work set forth a table which bidders were to use for this purpose and which would be used to evaluate bids. This table listed a number of engines of varying horsepower ratings for each of three different size discharge pipes (20-inch, 22-inch, and 24-inch) and indicated the estimated output per hour of dredged material for each combination of engine size and discharge pipe diameter. For example, the table showed that a dredge with a 2600 horsepower motor and a 20-inch diameter discharge pipe could be expected to dredge material at a rate of approximately 1065 cubic yards per hour. Bidders were to calculate the approximate number of hours necessary to perform all required work based upon the size of the engine (horsepower rating) and the size of the discharge pipe (inside diameter) using this table. Then, multiplying the bidder's hourly rate times the estimated number of hours of dredging necessary, extended prices were to be furnished for each line item. Award was to be made to that bidder which offered the lowest overall total price.

The IFB stated that "Bids based on dredges with smaller than a 20-inch inside diameter or larger than 24-inches pump discharge will be considered nonresponsive." The IFB also stated that:

"Those bids which are based on dredges which have horsepower greater than the maximum shown for each size dredge, will be evaluated on the basis of the maximum output listed in the table for that size dredge. Those dredges which have less horsepower than the minimum shown for each size dredge will be considered non-responsive."

The following bids were received by the September 30 bid opening date:

Prosperity	\$ 780,392
Folk	\$1,036,782
T.L. James & Co.	\$1,063,960
Pine Bluff Sand & Gravel Co.	\$1,208,672

Prosperity stated in its bid that it was offering a dredge, the "Hendry No. 4," which had a 24-inch diameter discharge pipe and a 4000-horsepower engine. However, Prosperity's bid also indicated that the shore and combination pipe which would carry the dredged material from the dredge to the shore was only 20-inches in diameter. The contracting activity referred Prosperity's bid to the Project Operations Branch for a determination whether the dredging equipment offered met the IFB's material specifications. The Acting Chief, Project Operations Branch, responded that, after inspection of the "Hendry No. 4" and attendant plant, he had determined that, since Prosperity proposed to connect 20-inch shore pipe and 20-inch combination pipe to the 24-inch discharge pipe, the bid was not acceptable because it did not meet the 24-inch discharge pipe requirement. Accordingly, by letter of November 28, 1986, the contracting officer notified Prosperity that its bid was rejected as nonresponsive.

On the other hand, Folk's bid stated that it would use a dredge, the "Cathy M," which had a 24-inch discharge pipe and a 2900-horsepower engine. Folk's bid left blank the space provided in the IFB to show the size of the shore pipe. This bid was also referred to the Project Operations Branch which decided that the bid was acceptable to the 22-inch or 24-inch discharge pipe requirement since the bid did not state what diameter shore pipe would be used and did not indicate what, if any, combination pipe would be used. Concerning the failure of Folk's bid to indicate the diameter of shore and combination pipe, the Chief, Project Operations Branch stated, "These items will be acceptable if they meet the required condition." The Corps of Engineers also noted that Folk's bid offered a 24-inch dredge with a 2900-horsepower engine which was less than the IFB's required minimum engine size (3200 horsepower) for that size dredge. However, the Corps decided to accept Folk's bid because Folk's bid prices were computed as if the bid offered a 22-inch dredge for which 2900 horsepower exceeded the IFB's required minimum engine size (2700 horsepower). Accordingly, the contract was awarded to Folk on November 28, and Prosperity protested to our Office by letter of December 4.

In its report to our Office on Prosperity's protest, the Corps of Engineers concedes that Prosperity's bid was incorrectly rejected as nonresponsive. The Corps reports that, since the IFB required dredges with discharge pipes of not less than 20 inches nor more than 24 inches, Prosperity's bid offering a 24-inch dredge in combination with a 20-inch shore pipe was in fact above the minimum discharge pipe size requirement. However, the Corps recalculated Prosperity's bid prices to reflect the fact that a 20-inch shore pipe will

allow the dredge to pump dredged material at a slower rate than a 24-inch shore pipe. The Corps used the IFB's table and recomputed the Prosperity bid as if a 20-inch dredge had been offered. Because the flow rate was lower, the Corps figured that Prosperity would actually take more hours than originally calculated to do the work. Thus, the Corps increased the number of hours by which Prosperity's hourly rate was multiplied to arrive at a recalculated bid total of \$1,045,800, which was higher than Folk's bid total of \$1,036,782. Therefore, the Corps argues that award to Folk was proper because Folk offered the lowest evaluated price.

The issue for resolution is whether Folk's bid was responsive to the IFB's requirements. We conclude that it was not and that therefore the award to Folk was improper.

To be responsive, a bid must reflect an unequivocal offer to provide the exact product or service called for in the solicitation so that its acceptance would bind the contractor to perform in accordance with the material terms and conditions of the IFB. Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 CPD ¶ 49. Thus, a bid must be rejected if it indicates that the product offered will not comply with the specifications. Id. Furthermore, the failure to submit with the bid specific information required by the IFB generally renders a bid nonresponsive. See Cummins Diesel Engines, Inc., 55 Comp. Gen. 999, 1004 (1976), 76-1 CPD ¶ 248 at 8 (failure to submit required horsepower curves).

Here, the IFB directed bidders to calculate their bids using the IFB chart showing various combinations of engine sizes and discharge pipe sizes and stated that "[t]hose dredges which have less horsepower than the minimum shown for each size dredge will be considered nonresponsive." The IFB also required bidders to submit with their bid a complete description of the equipment that they intended to furnish and contained an itemized sheet listing the information that had to be supplied with bids.


Folk's bid specifically stated that it intended to furnish a 24-inch dredge with only a 2900-horsepower engine. According to the IFB, the minimum size engine which would be considered responsive with a 24-inch dredge was a 3200-horsepower engine. Thus, from a technical standpoint, Folk's bid did not meet the minimum horsepower requirement. However, it was apparent from Folk's bid that the prices had been computed using the IFB's anticipated flow rate for a smaller (22-inch) dredge for which the 2900-horsepower engine would exceed the minimum requirement, and the Corps therefore determined the bid to be responsive to the horsepower requirement.

It is not clear whether the minimum stated horsepower ratings were material because the record does not indicate whether any engines below the minimum horsepower for a particular size dredge would be so underpowered as to be unable to drive the dredge properly, or whether an engine below the minimum size would merely take longer to perform the work. We need not resolve this matter, however, because we believe that Folk's bid contained a separate deficiency which rendered it unacceptable in any event.

Folk's bid did not state the size of the shore pipe which was one of the items of required information designated in the itemized sheet supplied for the description of the dredging equipment. It is clear from the record that the Corps considered this information to be a material part of the equipment description, especially since the Project Operations Branch specifically examined both bids for this piece of information and determined that Folk's bid could only be considered acceptable if it supplied shore/combination pipe which met the discharge pipe requirement. As the Corps has pointed out, the size of the discharge pipe alone does not determine the flow rate. Rather, the size of the shore pipe also has a significant impact on the flow rate which is a critical element in the evaluation formula. Since Folk's bid did not contain this required, material information, we do not see how the Corps could properly evaluate Folk's bid or recalculate Folk's bid prices (as allowed by the IFB). Therefore, Folk's bid was nonresponsive because it did not provide the specific critical information required by the IFB for evaluation purposes. Id.

In view of the above, we find that the contract was improperly awarded to Folk. Since the Corps of Engineers now concedes that Prosperity's bid is in fact responsive to the IFB, and because Prosperity's bid is the lowest priced, responsive bid (either as originally priced or as recalculated by the contracting officer), we recommend that the Corps of Engineers terminate Folk's contract for the convenience of the government and award the contract to Prosperity, if the contracting officer determines Prosperity to be responsible.

The protest is sustained.


for Comptroller General
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